No. 2855.

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United States
Circuit Court of Appeals
For the Ninth Circuit.

ASH SHEEP COMPANY, a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLEE'S BRIEF.

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STATE PUBLISHING CO., HELENA, MONT.

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ARGUMENT.

In reply to the brief of appellant herein, we respectfully submit that it should be disregarded or the argument set forth therein confined solely to the question which is raised by the first specification of error assigned by appellant in prefacing its argument. The merest glance at the brief of appellant herein will disclose to the court that, after a brief statement of the case, appellant proceeds to set forth what are designated "Specifications of Error" (Appellant's Brief p. 4) which specifications do not in any manner resemble the assignments of error filed with the petition for an

appeal herein, save and except it might be said that the first of appellant's "Specifications of Error" possibly is based upon Assignments of Error numbered "I" (Tr. p. 34).

Counsel for appellant having abandoned Assignments of Error numbered II to VII, both inclusive (Tr. pp. 34-35), cannot substitute in place of the same questions not contained in his specific assignments. It might be contended that "Specifications of Error" (Appellant's Brief p. 4) are merely an elaboration of the Assignments in the brief. The rules of this court and the decisions of the various Circuit Courts of Appeal are unanimous in holding that error not assigned cannot be urged on appeal, and will be disregarded.

Rules of Court 11 and 24;
Walton vs. Wild Goose M. Co., 123 Fed. 209, 211;
Stillwagon vs. B. & O. R. Co., 159 Fed. 97;
Russel vs. Bank, 162 Fed. 868, 871.

The error complained of in "Specifications of Error" numbered "I" (Appellant's Brief p. 4) is the only possible question that can be considered herein. There can be no possible combination of any of the Assignments of Error in the record which can be said to cover or in any manner include the specifications in the brief numbered "II" to "V," both inclusive, and a general assignment cannot be invoked to bring a specific point up for consideration on appeal.

City of Findlay vs. Pertz, 74 Fed. 681, 685.

The only real question before us to be argued

and determined on this appeal is did the lower court err in rendering and entering a decree herein in favor of the United States and against the appellant (defendant).

It is to be remembered that this case was once before this court on an appeal taken by the United States from a decree rendered in favor of the Ash Sheep Company, and in that former appeal all the questions attempted to be raised by appellant herein were gone into by counsel for the respective parties, considered by this court and decided in favor of the United States. The decision of this court is to be found in

> United States vs. Ash Sheep Company, 221 Fed. 582.

That decision is the law of the case and governs and controls this court, the same as it did the District Court of the United States for Montana, and will until such time, if ever, the same might possibly be reversed by the Supreme Court of the United States, but until such time arrives all are bound by it. Counsel for appellant confess their doubts of the propriety of raising these questions again in this court and apologize for so doing on page five of appellant's brief. We submit that the language used by the Circuit Court of Appeals for the Seventh Circuit states the rule which governs in such questions better than any words of our own.

> "To solve the questions presented by the remaining assignments it is necessary to un-

derstand the former decisions in this cause; for it is a familiar and entirely righteous rule that a court of review is precluded from agitating the questions that were made, considered and decided on previous reviews. The former decision furnishes 'the law of the case' not only to the tribunal to which the cause is rendered, but to the appellate tribunal itself on a subsequent writ of appeal. Roberts v. Cooper, 20 How. 467, 481, 15 L. Ed. 969: 'There would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticism on its opinions, or speculate of chances from changes in its members'."

Standard Sewing Machine Co. vs. Leslie, 118 Fed. 557, 559;

See also:

Supervisors vs. Kennicott, 94 U. S. 499;
Tyler vs. Magwire, 17 Wall. 284;
Stewart vs. Salomon, 94 U. S. 363;
Oregon etc. N. Co. vs. Balfour, 90 Fed. 301.

In the case at bar we have a record identical with that in the former appeal, save and except the lower court in obedience to the mandate of this court entered the decree it was ordered to.

We submit the decree appealed from should be affirmed.

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